



***Bureau of Land Management
Protest Resolution Report***

**Gunnison Sage-Grouse
Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

September 20, 2024

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Contents

| | |
|--|----|
| Acronyms | ii |
| Introduction | 1 |
| Protesting Party Index | 2 |
| FLPMA Violation: ACECs | 3 |
| FLPMA Violation: Multiple-Use Mandate | 5 |
| NEPA: Best Available Information..... | 6 |
| NEPA: Impact Analysis—Environmental Justice/Access | 9 |
| NEPA: Impact Analysis—Socioeconomics | 11 |
| NEPA: Response to Comments..... | 12 |
| Endangered Species Act..... | 14 |

Acronyms

| Term | Definition |
|-----------------------|---|
| ACEC | Area of Critical Environmental Concern |
| AFAD | American Falls Archaeological District |
| AIRFA | American Indian Religious Freedom Act |
| APA | Administrative Procedure Act |
| ATV | all-terrain vehicle |
| BEA | Bureau of Economic Analysis |
| BLM | Bureau of Land Management |
| BRC | Blue Ribbon Coalition |
| CEQ | Council on Environmental Quality |
| CFR | Code of Federal Regulations |
| CSU | controlled surface use |
| DEIS | Draft Environmental Impact Statement |
| EIS | Environmental Impact Statement |
| EO | Executive Order |
| ERMA | Extensive Recreation Management Area |
| ESA | Endangered Species Act |
| FEIS | Final Environmental Impact Statement |
| FLPMA | Federal Land Policy and Management Act |
| GUSG | Gunnison Sage-Grouse |
| IBA | Important Bird Area |
| IM | Instruction Manual |
| IMPLAN | Impact Analysis for Planning Model |
| km | kilometer |
| km² | square kilometer |
| LCMA | Linkage-Connectivity Management Area |
| NEPA | National Environmental Policy Act |
| NSO | no surface occupancy |
| OHMA | Occupied Habitat Management Areas |
| OHV | off-highway vehicle |
| OSV | over-snow vehicle |
| PRMPA | Proposed Resource Management Plan Amendment |
| RMP | resource management plan |
| RMPA | Resource Management Plan Amendment |
| TL | timing limitation |
| U.S.C. | United States Code |
| UHMA | Unoccupied Habitat Management Areas |
| USFWS | U.S. Fish and Wildlife Service |

Introduction

The Bureau of Land Management (BLM) Colorado and Utah State Offices released the Gunnison Sage-Grouse (GUSG) Proposed Resource Management Plan Amendment (PRMPA) and Final Environmental Impact Statement (FEIS) on July 5, 2024. The BLM received five unique protest letter submissions during the subsequent 30-day protest period, which ended on August 5, 2024.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. All five letters received were complete and timely, and were from parties who had standing to protest. Three of these letters contained valid protest issues. The BLM documents the response to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Colorado and Utah State Directors followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued this Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the GUSG PRMPA/FEIS were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority), resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the valid protest issues raised by the protesting parties, and the BLM's response to the protest issues.

Protesting Party Index

| Letter Number | Protester | Organization | Determination |
|----------------------|-------------------|----------------------------------|-----------------------------|
| PP-CO-GUSG-EIS-24-01 | Craig Howell | -- | Dismissed: Comments Only |
| PP-CO-GUSG-EIS-24-02 | Kathy Cooper | Western Small Miners Association | Dismissed: Comments Only |
| | John Reams | Western Small Miners Association | |
| PP-CO-GUSG-EIS-24-03 | Megan Mueller | Rocky Mountain Wild | Denied |
| | Vera Smith | Defenders of Wildlife | |
| | Michael Saul | Defenders of Wildlife | |
| | Allison Henderson | Center for Biological Diversity | |
| | Delaney Rudy | Western Watersheds Project | |
| PP-CO-GUSG-EIS-24-04 | Adam Eckman | Colorado Mining Association | Denied |
| PP-CO-GUSG-EIS-24-05 | Simone Griffin | BlueRibbon Coalition | Denied |

FLPMA Violation: ACECs

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project

Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy

Issue Excerpt Text: BLM’s proposal fails to comply with FLPMA’s direction to prioritize the protection of ACECs by not adequately addressing threats to the relevant and important values. FLPMA requires the BLM to “give priority” to the designation and protection of ACECs, which are areas of public lands that contain outstanding ecological, cultural, natural, or other values. 43 U.S.C. §§ 1711(a) and 1712(c)(3). As we discussed in our scoping comments (pages 6-38) where we nominated ACECs including management direction and in our comments on the draft RMPAs and EIS at pages 20-26, BLM must manage ACECs to assure the protection of the relevant and important values, e.g., GuSG and its habitat. Livestock grazing, oil and gas development, locatable, salable, and leasable non-fluid minerals, and recreation and access can adversely affect GuSG and therefore require special management attention.

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project

Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy

Issue Excerpt Text: As discussed elsewhere in this protest and in our comments on the draft RMPAs and EIS (e.g., see pages 29-35), travel and recreation management significantly influences the condition of GuSG and its habitat. The FEIS applies a mosaic of travel and recreation management requirements to ACECs (see Attachment 1) in which in places motorized and mechanized vehicles are allowed in various ways in time and space. It does not address dispersed camping in ACECs. To meet its responsibilities under FLPMA to prioritize the protection of ACECs, BLM should ensure that it finds the correct balance of allowing recreation and access while assuring the protection of relevant and important values. This requires establishing designated route systems for, at a minimum motorized and mechanized vehicles in summertime and wintertime, including for dispersed camping, and addressing timing and style of access; where travel management (including dispersed camping) systems have yet to be designated (i.e., GUSG ACEC/IBA and Dry Creek ACEC need travel systems and likely all ACECs need to address dispersed camping), BLM should prioritize travel management planning. Further, for all ACECs, BLM should establish adaptive management plans for travel and associated recreation access to minimize impacts to GuSG and its habitats from vehicular and human access and behavior; adaptive management plans should establish thresholds and responsive actions. See BLM Handbook H-8320-1, Section D.3.(e) on page II-16 that advises that in resource management plans BLM establish monitoring standards and indicators for adaptive recreation management strategies. Finally, BLM should apply additional specific management actions to all ACECs including: 1) Prioritize restoration and revegetation of decommissioned or closed routes; and 2) Provide adequate protection (signs, use stipulations, barricades, as needed) to protect sage-grouse and their habitats.

Summary:

Protestors stated that the BLM violated the Federal Land Policy and Management Act’s (FLPMA) directive to “give priority” to the designation and protection of Areas of Critical Environmental Concern (ACEC) by not addressing threats to the relevant and important values (i.e., GUSG habitat) and by failing to adequately balance recreation and access while ensuring the protection of relevant and important values.

Response:

Section 202(c)(3) of FLPMA requires that the BLM give priority to the designation and protection of ACECs in the development and revision of land use plans (43 United States Code [U.S.C.] § 1712(c)(3)). FLPMA defines ACECs as “areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (*Id.* § 1702(a)). The BLM’s planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of resource management plans (RMPs) and during amendments to RMPs when evaluation and designation of ACECs are within the scope of the amendment. As reflected in the regulations and existing policy, the BLM shall review nominated ACECs to determine whether they have relevant and important values and need special management (43 CFR 1610.7-2(a); BLM Instruction Manual [IM] 2023-013; and BLM Manual 1613, *Areas of Critical Environmental Concern*).

However, BLM policy does not require that a potential ACEC’s relevant and important values be protected to the same level or degree of protection in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual Section 1613.22.B). Elaborating further, the manual states that “[s]ituations in which no special management attention would be prescribed (and therefore no designation) include...those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes” (BLM Manual Section 1613.22.B.1). Therefore, BLM policy allows for one or more proposed management alternatives to be analyzed that would potentially affect relevant and important values for potential ACECs in order to evaluate the tradeoffs between management approaches and inform the BLM’s decision about ACEC designation and management in the area. In an approved plan, the BLM identifies all designated ACECs and provides the management direction necessary to protect the relevant and important values for each of the ACECs that are designated. As such, the special management is unique to the designated ACEC to account for the protection of the values in the designated area. The BLM has the discretion to make decisions that account for trade-offs, including trade-offs between protecting the relevant and important values identified in a potential ACEC and allowing for other values, resources, or resource uses within the planning area.

Additionally, ACECs differ from other special designations in that designation does not automatically prohibit or restrict other uses in the area. Special management attention is designed specifically for the relevant and important values, which may vary from area to area. ACECs can be open to oil and gas development, for example, subject to specific management guidelines and restrictions to balance resource extraction with conservation efforts. Through the land use planning process, the BLM may close areas within ACECs to specific uses to protect resources and values and to communicate management priorities concerning which areas should be prioritized for such uses.

The GUSG PRMPA/FEIS analyzed a range of alternatives for the management of potential ACECs and addressed special management actions that would protect relevant and important values of each potential ACEC in at least one alternative. Additionally, the BLM analyzed a range of alternatives and followed the procedural requirements for the designation of ACECs through the land use planning amendment process in BLM planning regulations at 43 CFR 1610.7-2. Per IM-2023-013, the GUSG PRMPA/FEIS considered all nominated areas in the planning area with relevant and important values, and that require special management attention, for potential designation as an ACEC. While a variety of ACEC designations are considered under the GUSG PRMPA/FEIS’s range of alternatives, Alternative B analyzes all nominated areas for ACEC designation. The management prescriptions analyzed under Alternative B offer a range of reasonable alternatives and were in response to public comments received. The Proposed Plan designates a sub-set of ACECs based on rationale and criteria outlined in GUSG PRMPA/FEIS Appendix D, *Areas of Critical Environmental*

Concert Report. Although the nominated satellite populations were not designated as ACECs under the Proposed Plan (Alternative F), the Proposed Plan includes management actions and resource exclusions within Occupied Habitat Management Areas (OHMA) to address threats to GUSG, including managing for no increase in net surface disturbance (see Table 2.2.2.13, row 8, pp. 2-22 through 2-23). Additionally, the Proposed Plan requires that in OHMA, impacts on GUSG be avoided, minimized, and mitigated. In authorizing third-party actions that result in habitat loss or degradation, the BLM will require and ensure a compensatory mitigation strategy that meets the conservation objectives and management decisions outlined for GUSG within the GUSG PRMPA/FEIS (see Table 2.2.2.13, row 12, pp. 2-27 through 2-30).

Additionally, the BLM adequately balances recreation and access while ensuring the protection of relevant and important values of these areas within the GUSG PRMPA/FEIS including management actions that support protections of these values. The BLM outlines management actions related to travel and recreation in Table 2.2.2.13 (GUSG PRMPA/FEIS pp. 2-64 through 2-71). One such management action states “new trail development or realignments would conserve or enhance habitat quality, improve sustainability over existing alignments, or prevent and address other resource concerns” (see row 66 MA 2.1, p. 2-66). Furthermore, the Proposed Plan includes no increase in net surface disturbance (see Table 2.2.2.1, row 8, p. 2-22), which would also support the protection of relevant and important values of designated ACECs. See also Table 2.2.2.7, row 70 MA 2, which states, “During implementation level planning, place high priority on improving and restoring intact habitat within OHMA and Unoccupied Habitat Management Areas (UHMA) when making route designation decisions, while maintaining access connectivity to key locations, facilities, amenities, allowing for the exceptions to the definition of an off-highway vehicle (OHV) provided for in 43 CFR 8340.0-5. During travel management planning in OHMA and UHMA, Field Offices will evaluate route density and look for opportunities to close redundant routes or decommission routes in GUSG habitat (conceptually RIS Priority Action 2 – 8.01)” (GUSG PRMPA/FEIS p. 2-69).

More information on specific ACECs, their site-specific management considerations, and how the proposed management actions affect the relevant and important values identified for existing and proposed ACECs is included in Section 3.15 of the GUSG PRMPA/FEIS (pp. 3.15-1 through 3.15-28).

The BLM adequately considered the protection of relevant and important values of ACECs in the GUSG PRMPA/FEIS. Accordingly, this protest issue is denied.

FLPMA Violation: Multiple-Use Mandate

Colorado Mining Association

Adam Eckman

Issue Excerpt Text: In addition to the lek buffers previously discussed, CMA has concerns about the roughly 50,000 acres of additional land proposed for designation and management as Areas of Critical Environmental Concern (ACEC) under the preferred alternative. The BLM does not explain why these areas are proposed for inclusion as ACECs in addition to the lek buffers the Bureau is also proposing or how the two separate management mechanisms were selected for the areas in question. Furthermore, the BLM does not adequately explain why existing management practices are insufficient to continue contributing to GUSG recovery in the areas proposed for ACEC designation. Without adequately justifying the designation of the proposed ACECs, the preferred alternative is inconsistent with the multiple use mandate of FLPMA and must be excluded from the final decision.

Summary:

Protestors stated that the BLM violated FLPMA’s multiple-use mandate by failing to adequately justify designation of the proposed ACECs under the PRMPA.

Response:

FLPMA directs the BLM to manage the public lands be on the basis of “multiple use” and “sustained yield” unless otherwise directed by law (42 U.S.C. 1732 (a)). Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

Per IM-2023-013, all nominated areas in the GUSG planning area that have relevant and important values and may require special management attention were considered for potential designation as an ACEC. The BLM analyzed a range of alternatives and followed the procedural requirements for the designation of ACECs through the land use planning, revision, or amendment process in BLM planning regulations at 43 CFR 1610.7-2.

GUSG PRMPA/FEIS Appendix D, *Areas of Critical Environmental Concern Report*, provides detailed information on the criteria BLM utilizes to define and designate an ACEC, including relevance and important values. The GUSG PRMPA/FEIS analyzed a range of alternatives, as described in Section 2.2, *Alternatives*. The range of alternatives analyzed in the GUSG PRMPA/FEIS examines an appropriate balance of uses on public lands, as required by FLPMA. Additionally, the BLM included a discussion of affected environment and environmental effects for each ACEC area, including rationale for differences amongst the alternatives in Section 3.15 of the GUSG PRMPA/FEIS (pp. 3.15-1 through 3.15-28).

The BLM adequately analyzed a range of alternatives and provided rationale for the designation of ACECs within the planning area. As such, the GUSG PRMPA/FEIS satisfies FLPMA’s multiple use policy. Accordingly, this protest issue is denied.

NEPA: Best Available Information***Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project***

Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy

Issue Excerpt Text: Indeed, the FEIS states that “disturbance caps would not affect acreages permitted in plans of operations or development of permitting mine area” because of the legal regime these operations fall under. FEIS at 3.13-20. Accordingly, the only way for BLM to sufficiently protect GuSG habitat is to recommend and ensure the withdrawal of GuSG habitat from locatable mineral entry as BLM cannot otherwise guarantee or prevent unacceptable impacts to the species from this land use. The locatable mineral withdrawal proposed in this RMPA and adopted should be reflective of the best available science, informed by the well- understood negative impacts of surface disturbance within a four-mile radius of leks. See Section II below discussing the science on 4-mile lek buffers. Locatable mineral development is irreconcilable with the Gunnison sage-grouse’s biological requirements if GuSG are to have a shot at recovery. Addressing this threat comprehensively with a robust mineral withdrawal recommendation is needed to meet the biological need for limited surface disturbance, for internal consistency and to ensure the RMPA puts the species on track for recovery.

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project***Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy***

Issue Excerpt Text: It is beneficial for the species that OHMA be closed to non-energy leasable minerals and that modification to existing leases in OHMA to expand within this habitat would be prohibited. FEIS at 3.13-14-15 (note it appears there is a typo at 3.13-15 as “fluid minerals” is referenced when talking about the no net increase, but this section is analyzing solid mineral leasing). And while conditions of approval would apply within UHMA that would be left open, the proposal does not go far enough to meet the species’ needs. This is because Alternative F would allow non-energy mineral leases potentially as close as within one mile of UHMA and two miles of OHMA. FEIS at 3.13-14, 15. These proposed buffers are not consistent with the best available science, and UHMA should be managed identically to OHMA under the expectation that over time, UHMA will shift to be occupied as habitat conditions improve. It also would not extend the no net surface disturbance requirement to LCMA and adjacent non-habitat. FEIS at 2-80 to 281 . Recommendation: Close OHMA, UHMA, and LCMA to non-energy solid mineral leasing and sales. At a minimum, close OHMA, UHMA and apply the “no net increase in surface disturbance” requirement to LCMA.

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project***Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy***

Issue Excerpt Text: We recognize and appreciate that BLM has come farther since the DEIS with Alternative F, applying NSO stipulations throughout OHMA and within one mile of all GuSG leks that are not subject to waiver, modification, or exemption. FEIS at 3.13-8. One mile, however, is insufficient for protecting the species from negative impacts like significantly decreased lek attendance and thus safeguarding the species from continued decline. Moreover, unlike the NSO for OHMA and adjacent non-habitat within one mile, UHMA would remain subject to waiver, exception or modification, and if that is granted then very liberal CSU and TL stipulations would be applied. See e.g. FEIS at Appendix M-12. The proposed Controlled surface use (“CSU”) stipulation for UHMA does not rise to the species’ needs as it merely allows “BLM to require special operational constraints” which are unidentified and undefined, or to shift the leasing as minimally as “656 feet.” FEIS at I-2. Timing limitations (“TL”) are also only a “moderate constraint” that generally do “not apply to operation and basic maintenance activities, including associated vehicle travel.” FEIS at I-13. The FEIS acknowledges that oil and gas development has a strong negative effect on local-scale lek attendance within a 3.2 km (2 mile) radius around a well, that there are significant declines in sage-grouse lek attendance when well densities are greater than 4 wells/km², and that declines in sage-grouse lek attendance have been directly linked to energy development. FEIS at 3.2-52, 3.2-28. The FEIS does not explain why BLM is diverging from the best available science and failing to adopt science-based buffers. We reiterate our request that no surface disturbance stipulations are not subject to waiver, exception, or modification in UHMA and science-based lek buffers. See DEIS comment at 17.

BlueRibbon Coalition***Simone Griffin***

Issue Excerpt Text: The Administrative Procedures Act waives the United States’ sovereign immunity for those aggrieved by “final agency action.” 5 U.S.C. §§ 702, 704; Lujan v. National Wildlife Federation, 497 U.S. 871, 882 (1990). APA section 706(2) provides the relevant standard of review: a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be-(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or] (E) unsupported by substantial evidence....” [The Agency] must examine

the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (citations omitted). An adequate response would have been to address our concerns about the sources or to identify new and more reliable resources for justifying BLM's conclusion to support Alternative F. By failing to adequately consider evidence that runs counter to the agency's preferred alternative, and relying on questionable resources, BLM made a decision that is arbitrary and capricious.

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: We protest BLM's disregard of best available science. To the extent BLM relied on external sources of information to decide a final agency action, it only considered sources that validated its preferred alternative. This failure to consider all important aspects of the problem and the full range of evidence adds weight to our concern that BLM has failed to comply with NEPA by offering a fatally flawed set of alternatives that would result in the preferred alternative being the only acceptable alternative. BRC protests the lack of response given to our concerns regarding the data and science being used. Unfortunately, even though BLM solicited and received a range of alternatives, it failed to analyze a viable alternative that didn't suffer from the statutory and constitutional deficiencies of Alternative F.

Summary:

Protestors stated that the BLM violated the National Environmental Policy Act (NEPA) and the Administrative Procedures Act by not using the best available science when determining the buffer distance for limiting or excluding mineral and fluid leasing around GUSG populations. Protestors provided sources they allege were the best available information that the BLM failed to use to determine buffer distance, including the U.S. Fish and Wildlife Service (USFWS) Recovery Plan for the GUSG PRMPA/FEIS. Protestors also stated that the BLM violated NEPA by failing to consider evidence that runs counter to the agency's preferred alternative, resulting in management actions that they allege are arbitrary and capricious.

Response:

NEPA requires the BLM to "ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document" (42 U.S.C. 4332(d)). The Council on Environmental Quality's (CEQ) regulations implementing NEPA further require that agencies use information that is of "high quality" (40 CFR 1500.1(b)). The BLM NEPA Handbook also directs the BLM to "use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed" (BLM Handbook H-1790-1, p. 55). In addition, under the BLM's guidelines for implementing the Information Quality Act, the BLM applies the principle of using the "best available" data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The Administrative Procedures Act (5 U.S.C. 551–559) establishes how Federal administrative agencies like the BLM make rules and how they adjudicate administrative litigation, including granting agencies the ability to make rulemaking decisions formally or informally, as well as going beyond the resolution of specific controversies to include administrative functions.

In its analysis, the BLM determined a 1-mile right-of-way exclusion and avoidance buffer around OHMA and UHMA would be sufficient to conserve habitat. The rationale for this is provided in Section 3.2.3.2 (GUSG PRMPA/FEIS pp. 3.2-46 through 3.2-47), which describes the mid-scale assessment the BLM conducted to determine the amount of available habitat for GUSG in the mid-scale area. This assessment determined that connectivity between populations is minimal and that “connectivity was unsuitable due to the lack of unavailable habitat patches, density of major roads fragmentation between sagebrush patches, and minimal existing connectivity between occupied habitat patches” (GUSG PRMPA/FEIS pp. 3.2-46 through 3.2-47). The BLM analyzed a full range of alternatives by applying a 4-mile buffer distance to OHMA and UHMA to identify Adjacent Non-habitat areas under Alternative B and a 1-mile buffer for these areas under Alternatives D, E, and F (see Table 2.2.2.1, Row 19, pp. 2-33 through 2-34). These buffer distances correspond to conservation buffer distances that would capture both the potential dispersal distance of GUSG from a lek site to provide protection for nesting locations and areas in which resource uses could be managed to reduce impacts or disruption to GUSG in OHMA and UHMA. Management actions under Alternatives D, E, and F would include minimizing effects of discrete activities on GUSG, rather than avoidance. Appendix G of the GUSG PRMPA/FEIS contains a detailed mitigation strategy, which aims to reduce, eliminate, or minimize threats and compensate for residual impacts on GUSG and its habitat. The BLM cites several studies that it used in its analysis, the full citations for which can be found in GUSG PRMPA/FEIS Appendix T, *References*. As indicated in this appendix, the BLM did use sources that protestors provided throughout the analysis of the GUSG PRMPA/FEIS including the USFWS 2020 final recovery plan for GUSG, which is cited extensively throughout the document.

The BLM complied with the Administrative Procedures Act and NEPA by relying on high-quality information and the best available data in preparation of the GUSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA: Impact Analysis—Environmental Justice/Access

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: On his first day in office, President Joe Biden issued an “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” This executive order established “an ambitious whole-of-government equity agenda” which focuses on addressing “entrenched disparities in our laws and public policies,” and mandates a “comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” Under this executive order, “The term ‘equity’ means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as ... persons with disabilities....”

Historically, there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network. It is also entirely possible that many of the Shoshone-Bannock tribal members who wish to access the sacred sites of the AFAD currently or will at some point suffer from mobility impairment disabilities. Because the elimination of motorized access from the AFAD would prevent disabled tribal members from accessing sacred

sites, the motorized restrictions in Alternative 2 would likely be contrary to EO 13007, EO 13985, and AIRFA.

BlueRibbon Coalition
Simone Griffin

Issue Excerpt Text: The EIS fails to ever consider the Equity Action Plan. The EIS also never analyzes the potential impacts of ACEC’s. ACEC’s historically have closed roads and access. Therefore the claim that this will not affect OHV travel is completely inaccurate and never thoroughly considered by the planning team. BRC made mention of this in 2024 during the public comment period for the EIS in which the BLM never gave a response to, “Any new ACEC or restrictive designations would contradict the Equity Action Plan. BLM should also continue to manage the current ACEC’s as is. Currently only 2 of the 23 ACEC’s restrict other uses and this should continue as the BLM has a multiple use mandate.”

Summary:

Protestors stated that the BLM violated NEPA by limiting motorized access throughout the Planning Area, which is directly contrary to Executive Order (EO) 13007, EO 13985, and the American Indian Religious Freedom Act (AIRFA). Protestors also stated that the BLM violated NEPA by failing to analyze the potential impacts of ACECs with regard to equity and accessibility, in compliance with the Equity Action Plan.

Response:

NEPA directs that data, and an environmental analysis, must be commensurate with the importance of the impact (40 CFR 1502.15(c)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the GUSG PRMPA/FEIS, including impacts on environmental justice communities. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the Proposed Plan and alternatives.

EO 13007, adopted May 24, 1996, addresses protecting and preserving Indian Sacred Sites, including requiring Federal land managing agencies to accommodate access to and ceremonial use of these locations (Sec.1 (1)). EO 13985 (also referred to as the Equity Action Plan), signed on January 20, 2021, directs the Federal government to revise agency policies to account for racial inequities in their implementation and is intended to address systemic racism and improve opportunities for historically underserved communities. AIRFA (42 U.S.C. 1996) was enacted on August 11, 1978, and was intended to return civil liberties to American Indians, Eskimos, Aleuts, and Native Hawaiians with specific focus on the freedom to practice, protect, and preserve traditional religious rites. These rights include, but are not limited to, access to sacred sites, freedom to worship through traditional ceremonial rites, and the possession and use of objects traditionally considered sacred by their respective cultures.

The BLM acknowledges the impact that transportation closures may have on recreators within affected areas; however, the GUSG Proposed Plan (Alternative F) does not restrict motorized access beyond “routes that existed at the time of this plan’s issuance, except for areas already managed as OHV-Closed... which will remain closed.” Additionally, until travel management plans to designate routes are completed, OHV and mechanized travel to routes will be limited to those that existed at the time of the plan’s issuance (GUSG PRMPA/FEIS Table 2.2.2.7, row 69, p. 2-68). The seasonal closures proposed in the GUSG PRMPA/FEIS, including those in ACECs, are meant to prevent

disturbance to lekking, nesting, and brood-rearing GUSG, and equally affect all potential users. Therefore, BLM’s proposed transportation/recreation actions under the GUSG PRMPA/FEIS would not disproportionately affect persons with disabilities.

Historically, BLM land was undesignated for motorized travel; inclusion of OHV designations has evolved with time and remains an allocation-level decision (GUSG PRMPA/FEIS p. 3.12-1). When making route-specific designations in travel management plans, the BLM uses the designation criteria found in 43 CFR 8342.1 to protect resources, promote safety, and minimize conflicts. Any restrictions to be placed on non-motorized uses (non-OHV) are implemented through supplementary rules (43 CFR 8365.1-6). The BLM incorporated a qualitative analysis of transportation impacts as it relates to recreation (GUSG PRMPA/FEIS p. 3.11-8), as well as analyzing the impacts in full under Section 3.12 (GUSG PRMPA/FEIS pp. 3.12-1 through 3.12-12). In the GUSG PRMPA/FEIS, Alternative F is the BLM’s Proposed Plan, which was developed based on public comments to the GUSG Draft Resource Management Plan Amendment (RMPA)/Environmental Impact Statement (EIS) and manages lands with the objective for no increase in net surface disturbances and limits OHV and mechanized travel on undesignated routes until travel management planning is completed (GUSG PRMPA/FEIS p. 3.12-10).

In the spring of 2023, Congress amended NEPA as part of the Fiscal Responsibility Act in tandem with EO 14096, which defined environmental justice to mean the “just treatment and meaningful involvement of all people” in agency decision-making and actions “regardless of income, race, color, national origin, Tribal affiliation, or disability.” NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through EO 14096, agencies are encouraged to include effects that relate to environmental justice. The BLM is dedicated to ensuring that everyone has an equitable opportunity to access its public lands by providing access to facilities, programs, services, and activities for people with disabilities. Impacts on environmental justice are analyzed in Section 3.16.3 (GUSG PRMPA/FEIS pp. 3.16-36 through 3.16-41) and Section 4.2.1 (GUSG PRMPA/FEIS pp. 4-1 through 4-2).

The BLM complied with NEPA’s requirement to analyze the environmental consequences and impacts of limiting motorized access on environmental justice communities in the GUSG PRMPA/FEIS. Accordingly, this protest issue is denied.

NEPA: Impact Analysis—Socioeconomics

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: BRC protests the lack of analysis of economic loss by designating areas as limited to designated routes. Many OSV enthusiasts travel to an area for the cross country recreational experience. Evidence does not support that motorized travel significantly impacts big game habitat. There was not adequate socioeconomic analysis. The Bureau of Economic Analysis (BEA) released 2022 data showing outdoor recreation generated over \$1 trillion in economic output and 4.5 million jobs. The BLM’s response didn’t reflect the massive influence outdoor recreation has on the economy. It also relied on economic data from the scoping period, which doesn’t account for a decade of explosive growth in the outdoor recreation industry.

Summary:

Protestors stated that the BLM violated NEPA by failing to adequately analyze the economic impacts of designating areas as limited to designated routes. The BLM further violated NEPA by

failing to use the best available economic data, by relying on economic data from the scoping period.

Response:

NEPA directs that the level of detail of the analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (i.e., impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1 § 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

In Section 3.16.2.1 and Section 3.16.3.1 of the GUSG PRMPA/FEIS, the BLM outlines indicators of socioeconomic effects resulting from proposed management actions, including socioeconomics impacts related to recreation. The analysis in Section 3.16.2.3 uses the Impact Analysis for Planning Model (IMPLAN), with 2021 data, to estimate the economic consequences of changes to an industry, event, or policy. The BLM applied a balanced approach to allocating resources and conserving resource values while sustaining and enhancing ecological integrity (GUSG PRMPA/FEIS, Section 3.16.2.3, pp. 3-16 through 3-27).

The scoping period for the GUSG PRMPA/FEIS occurred from July 6, 2022, through August 22, 2022. The BLM has reviewed the scoping comments and coordination with Federal, State, local, and Tribal Governments that occurred during the planning process for the GUSG PRMPA/FEIS and identified the scope of issues to be addressed in the RMPA and assist in formulating reasonable alternatives. As the scoping period was conducted in 2022, scoping data include the last decade of growth in the outdoor recreation industry.

Therefore, the BLM used the best available information in its socioeconomic analysis for the GUSG PRMPA/FEIS, relied on current information in preparation of the GUSG PRMPA/FEIS, and complied with NEPA's requirement to analyze socioeconomic impacts. Accordingly, this protest issue is denied.

NEPA: Response to Comments

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project

Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy

Issue Excerpt Text: As discussed in our comments on the draft EIS at page 30, dispersed camping adversely affects GuSG by disturbing habitat as campers drive cross-country to find a campsite resulting in the disturbance of the area where they camp and the surrounding areas (e.g., off leash dogs, noise). When campers drive off existing routes to camp, they create a route which is subsequently absorbed into the system of existing routes, further fragmenting habitat and increasing route density. Essentially, users are making decisions to “construct” routes outside of a sanctioned planning process that is bound by the requirements of NEPA. The FEIS does not address dispersed camping even though we raised it in our comments as an impact that should be addressed to reduce adverse impacts from recreation on GuSG.

Summary:

Protestors stated that the BLM violated NEPA by failing to address impacts from dispersed camping on GUSG populations within the FEIS, as requested during the public comment period.

Response:

The BLM is required to assess, consider, and respond to all substantive comments received during the public comment periods in the planning process for an RMPA (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pp. 23–24).

In compliance with NEPA, the BLM considered all public comments submitted on the GUSG Draft RMPA/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix W, *Substantive Comments Received and BLM Responses to Comments of the GUSG RMPA/FEIS*, presents the BLM's responses to all substantive comments. Within Table W.B.1, the BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impact analysis, or factual corrections made in the GUSG PRMPA/FEIS as a result of public comments. The BLM's responses also explain why certain public comments did not warrant further agency response. BLM's comment response process does not treat public comments as if they were a vote for a particular action, but does ensure that every comment is considered at some point when preparing the GUSG PRMPA/FEIS.

The protestor states the BLM failed to address impacts on GUSG populations from dispersed camping. The designation of the Gunnison Sage-Grouse ACEC, Chance Gulch ACEC, Sapinero Mesa ACEC, and Sugar Creek Backcountry Conservation Area includes management with seasonal closures, such as during lekking season (March 15 to May 15), to vehicles and human use; therefore, opportunities for dispersed camping would be closed during these periods. Seasonal closures are implemented to prevent disturbance to lekking, nesting, and brood-rearing GUSG. The designation of ACECs also allows the BLM to maintain a clear management boundary for activities such as camping. As shown in Table 2.2.2.13, the GUSG PRMPA/FEIS under the Proposed Plan (Alternative F) restricts human access (e.g., recreation/camping) from March 15 to May 15 in certain ACECs to protect GUSG during the lekking season (GUSG PRMPA/FEIS pp. 2-102, 2-115, 2-119, and 2-124).

Section 3.2.2.3 of the GUSG PRMPA/FEIS (pp. 3.2-52 through 3.2-59) identifies impacts from recreation on GUSG, including impacts from human visitation, noise, and increased presence of predators. The discussion indicates areas where Special Recreation Management Area or Extensive Recreation Management Areas (ERMA) overlap with OHMA and how GUSG could be affected by disturbance or degradation of habitat. However, the portion of Special Recreation Management Area acres that overlap OHMA is small (ranging from 4 percent to 8 percent) (GUSG PRMPA/FEIS pp. W.B-97). Seasonal travel limitations/closure of roads would limit the number of visitors and recreational use in the vicinity of the closures, and thereby limit noise and disturbance in GUSG habitat. For example, under the Proposed Plan (Alternative F), designated routes to motorized travel in Hartman Rocks would be closed seasonally from March 15 through May 15 (GUSG PRMPA/FEIS pp. 2-116). Appendix L of the GUSG PRMPA/FEIS (Section L.2, *Gunnison Extensive Recreation Management Area*, pp. L-3 through L-4) has been updated for the Gunnison ERMA to clarify that management within the ERMA would first apply the allocations and associated management actions from the PRMPA, as well as demonstrating several specific travel decisions for the Gunnison ERMA that would reduce effects on GUSG.

The BLM adequately responded to public comments on the GUSG Draft RMPA/EIS in the GUSG PRMPA/FEIS. Accordingly, this protest issue is denied.

Endangered Species Act

Rocky Mountain Wild, Defenders of Wildlife, Center for Biological Diversity, Western Watersheds Project

Megan Mueller, Vera Smith, Michael Saul, Allison Henderson, Delaney Rudy

Issue Excerpt Text: And, while Table 3.12.3 shows a rough estimate of roads, primitive roads and trails for each population, BLM at FEIS 3.12-4 readily admits that “BLM-Administered lands are generally accessible via an extensive network of routes within the area.” These user-created routes, which presumably are not reflected in the table, have never gone through environmental analysis or Endangered Species Act consultation. Thus, BLM has not designated a motorized travel management system across the range that protects the GuSG from disturbance and protects GuSG habitat from further destruction and fragmentation.

Summary:

Protestors stated that the BLM violated the Endangered Species Act (ESA) by failing to analyze impacts on GUSG from user-created routes and by failing to designate a motorized travel management system.

Response:

Section 7(a)(2) of the ESA requires Federal agencies to ensure that their proposed actions will not be “likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of the critical habitat of such species” (16 U.S.C. 1336(a)(2)). If an agency determines through a finding in a biological assessment that a proposed action is likely to adversely affect listed species or designated critical habitat, formal consultation is required under (50 CFR 402.14(a)).

The BLM determined that the approval of the GUSG PRMPA/FEIS is likely to adversely affect listed species or critical habitat, and therefore underwent formal consultation with the USFWS. The BLM documented this determination in the Biological Assessment for the GUSG PRMPA/FEIS, which was provided to the USFWS for its review and comment. The BLM used the same information and biological data to prepare both the Biological Assessment and to analyze the environmental impacts on affected species in the FEIS.

Regarding the creation of user-created routes, public land users are required to use non-motorized methods on designated routes that are closed to motorized or mechanized travel to reach areas not directly accessible from roads. Users are responsible for adhering to relevant laws and regulations. The potential impacts on public land users’ access to BLM managed lands from proposed transportation-related allocations and management actions under each alternative is fully analyzed in GUSG PRMPA/FEIS, Section 3.12.2 (pp. 3.12-1 through 3.12-11). Unauthorized overland travel is also specifically called out as a past, present, and reasonably foreseeable action that is considered in part of the cumulative impacts on vegetation (GUSG PRMPA/FEIS p. 3.1-5). Similarly, unauthorized travel, travel off designated or existing routes, and the creation of social trails are specifically called out as past, present, and reasonably foreseeable actions that are considered in part of the cumulative impacts from recreation (GUSG PRMPA/FEIS p. 3.1-7). These impacts are analyzed in Section 3.6.2.3, *Environmental Consequences* (pp. 3.6-41 and 3.6-42), and Section 3.6.2.5, *Cumulative Effects* (p. 3.6.2.5), of the Chapter 3 vegetation section of the GUSG PRMPA/FEIS. Also, management action REC-4-34 specifically closes areas, either temporarily or permanently as needed, affected by unauthorized use for rehabilitation (GUSG PRMPA/FEIS p. 2-111).

Enforcement activities are a component of the BLM's management but cannot be used as a substitute for proactive land management. The monitoring and reporting plan provided in Appendix F of the GUSG PRMPA/FEIS would be used to monitor GUSG habitat and evaluate habitat loss and degradation. The monitoring plan considers the entire suite of conditions that contribute to high-quality habitat and the success of past conservation actions, and prioritizes future land uses and conservation actions.

In developing the GUSG PRMPA/FEIS, the BLM has fully complied with Section 7(a)(2) of the ESA. Accordingly, this protest issue is denied.

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